

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

WHITAKER,

Plaintiff,

No. C 13-0113 PJH (PR)

vs.

ORDER OF DISMISSAL

DR. M. SALEEM, et. al.,

Defendants.

Plaintiff, a state prisoner currently incarcerated at Salinas Valley State Prison, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. His original complaint was dismissed with leave to amend and he has filed an amended complaint.

DISCUSSION

A. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the statement need only "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests."" *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations omitted). Although in order to state a claim a complaint "does not need detailed factual

allegations, . . . a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must be enough to raise a right to relief above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations omitted). A complaint must proffer "enough facts to state a claim to relief that is plausible on its face." *Id.* at 570. The United States Supreme Court has recently explained the "plausible on its face" standard of *Twombly*: "While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief." *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1950 (2009).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged deprivation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

B. Legal Claims

In his original complaint, plaintiff stated that defendant Ford denied him food, because he would not talk to him and took his yard and canteen privileges. Plaintiff next alleged that defendant Dr. Saleem gave false testimony in a *Keyhea*¹ hearing, by falsely stating that plaintiff had threatened staff. As a result, plaintiff was involuntarily administered psychotropic medication. The complaint was dismissed with leave to amend to provide additional information, unfortunately the amended complaint mostly repeats the allegations of the original complaint.

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¹ In *Keyhea v. Rushen*, 178 Cal.App.3d 526 (1986), the state appellate court "upheld a consent decree affirming the right of state prisoners to refuse antipsychotic medications except under certain limited circumstances." *In re Qawi*, 32 Cal.4th 1, 21 (2004). Under California law, the *Keyhea* procedures govern the involuntary administration of antipsychotic medications.

1 Plaintiff states a defendant denied him food, though plaintiff fails to describe if this
2 was one meal or a recurring problem. Plaintiff also states that his classification status was
3 changed and he was denied yard and canteen privileges. However, a prisoner does not
4 have a constitutional right to a particular classification status. *Hernandez v. Johnston*, 833
5 F.2d 1316, 1318 (9th Cir.1987) (quoting *Moody v. Daggett*, 429 U.S. 78, 88 n. 9 (1976).

6 Plaintiff includes a transcript of the *Keyhea* hearing (Docket No. 6), where he was
7 represented by counsel, testified on his own behalf but the administrative law judge
8 ultimately found based on the totality of the evidence that plaintiff was a danger to others
9 and needed to be medicated. To the extent plaintiff is asserting a due process violation, he
10 has failed to state such a violation. "[T]he Due Process clause permits the State to treat a
11 prison inmate who has a serious mental illness, with antipsychotic drugs against his will, if
12 the inmate is dangerous to himself or others and the treatment is in the inmate's medical
13 interest" as long as the decision to medicate against his will is neither arbitrary, nor
14 erroneous, and comports with procedural due process. *Washington v. Harper*, 494 U.S.
15 210, 227-29 (1990). Simply stating that a witness lied, fails to demonstrate a violation of
16 due process as plaintiff was provided all the procedural protections and has failed to show
17 an erroneous or arbitrary decision.

18 Plaintiff's amended complaint will be dismissed and as plaintiff has already been
19 provided a chance to amend and as he failed to cure the deficiencies of the complaint, this
20 case is dismissed with prejudice. See *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000).

CONCLUSION

The complaint will be **DISMISSED** and as plaintiff has already been provided a chance to amend and as he failed to cure the deficiencies of the complaint, the case is **DISMISSED** with prejudice.

IT IS SO ORDERED.

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Dated: March 18, 2013.



PHYLLIS J. HAMILTON
United States District Judge

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